

C. Splitter Ownership and Placement

1. Introduction

The FCC notes that a splitter's primary function is to separate the high frequency (xDSL signals) from the low frequency (voiceband) analog signals traversing the copper loop. Line Sharing Order at ¶ 9 n.11. Splitters are installed at each end of the customer's loop to accomplish this operation. Id. at ¶ 66. One splitter is installed at the customer's premises and the other splitter is placed at the central office or RT. Id. Specifically, the splitter "bifurcates the digital and voiceband signals concurrently traversing the local loop, directing the voiceband signals through a pair of copper wires to the Class 5 switch, and directing the digital traffic through another pair of copper wires to a DSLAM [Digital Subscriber Line Access Multiplexer] attached to the packet-switched network." Id.

The FCC's Order permits ILECs to "maintain control over the loop and splitter equipment and functions," or permits CLECs to own and collocate their own splitters in the ILEC's central office. Id. at ¶¶ 76, 79. Verizon's proposed tariff provides for two splitter placement options, both of which require the CLEC to purchase and collocate its splitter in Verizon's central office. In the so-called Option A splitter arrangement, the CLEC purchases and installs the splitter in its collocation cage (Exh. VZ-MA-2, at 56). Under the Option C arrangement, the CLEC purchases the splitter and transfers ownership of it to Verizon for a nominal amount (id. at 54). Under Option C, the splitter is installed by Verizon in the common space of its central office (id.). In addition, the splitter is maintained by Verizon in the Option C scenario (id.). Several CLECs ask the Department to direct Verizon to purchase the splitter and make it available to requesting CLECs. In addition, CLECs ask that the

Department require Verizon to permit CLECs to mount their splitters directly onto Verizon's main distribution frame ("MDF"). Verizon opposes these requests.

2. Positions of the Parties

a. Verizon

Verizon argues that under applicable federal court precedent and FCC rules, Verizon cannot be required to own splitters for CLEC use (Verizon Reply Brief at 33). Specifically, Verizon asserts that there is nothing in the Act, the FCC's regulations, or its UNE Remand Order or Line Sharing Order that supports the CLECs' argument that the ILECs' obligation to provide unbundled access to the high frequency portion of the loop includes the obligation to own and provide splitters for CLECs (Verizon Brief at 21). If this logic were followed, Verizon argues, and ILECs were required to provide "all equipment that might be useful in utilizing a network element, [ILECs] would have an obligation to provide all of the equipment that CLECs currently own and locate in their collocation cages and Points of Presence" (*id.*).

Verizon points to several federal court decisions, which, it argues, make clear that § 251(c)(3) of the Act requires unbundled access only to an ILEC's existing network, and not to a yet unbuilt, superior one (*id.* at 20, citing Iowa Utilities Board v. FCC).¹⁶ More recently, according to Verizon, a federal district court reaffirmed the Eighth Circuit's conclusion that "delay and higher costs for new entrants . . . [that may] impede entry by

¹⁶ 120 F.3d 753, 812-13 (8th Cir. 1997).

[CLECs] and delay competition' cannot be used by the FCC to overcome statutory terms in the [Act]" (*id.*, citing GTE Service Corp. v. FCC).¹⁷

Neither the Line Sharing Order nor the SBC Texas Order,¹⁸ Verizon argues, requires it to purchase splitters (*id.* at 22). Verizon states that in the former Order, the FCC states that ILECs "may maintain control over the loop and splitter equipment, if desired" (*id.*, citing Line Sharing Order at ¶ 76). Verizon argues that in the latter Order, the FCC "squarely rejected the same arguments" CLECs raise here before the Department regarding Verizon's obligation to own splitters (*id.* at 22). Verizon cites the following language from the FCC's SBC Texas Order to support its position: "The [FCC] has never exercised its legislative rulemaking authority under section 251(d)(2) to require [ILECs] to provide access to the splitter, and [ILECs] therefore have no current obligation to make the splitter available," and "[t]he UNE Remand Order cannot be fairly read to impose on [ILECs] an obligation to provide access to their splitters" (*id.* at 22-23, citing SBC Texas Order at ¶¶ 327-328).

According to Verizon, if the Department were to consider ordering Verizon to purchase splitters for CLECs, FCC Orders require the Department to perform the analysis set forth in federal Rule 317(b)(2), which requires a thorough review of such issues as cost, timeliness, quality, ubiquity, and impact on network operations (*id.* at 24). Verizon argues that CLECs

¹⁷ 205 F.3d 416, 423-24 (D.C. Cir. 2000).

¹⁸ In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order (rel. June 30, 2000) ("SBC Texas Order").

have not demonstrated that they will be “impaired” if Verizon does not own splitters and supply access to CLECs on a line-at-a-time or shelf-at-a-time basis¹⁹ (*id.* at 26). Verizon also contends that CLEC arguments in support of ILEC splitter ownership do not meet the public policy concerns outlined in Rule 317(c), which include whether unbundling the network element promotes the rapid introduction of competition and promotes innovation and investment (*id.* at 27).

Finally, Verizon argues that there are no MDF mountable splitters that are compliant with Network Equipment and Building Specifications (“NEBS”) on the market (Verizon Reply Brief at 14, *citing* Tr. at 784). Moreover, Verizon argues that it needs to conserve space on its MDFs for providing basic local exchange service, an argument that Verizon notes was supported by a federal appellate court (Verizon Brief at 60, *citing* GTE Services Corporation v. FCC, Nos. 99-1176, 99-1201, 200 U.S. App. Lexis 4111 (D.C. Circuit, March 17, 2000)). For these reasons and because, according to Verizon, the FCC does not require ILECs to permit MDF-mounted splitters, the Department should deny the CLEC request to mount their splitters directly onto Verizon’s MDF (Verizon Reply Brief at 14).

¹⁹ A standard splitter shelf is comprised of 96 lines (*see e.g.*, Tr. at 768). Splitter access on a per shelf basis is generally understood to involve all 96 lines. Splitter access on a per line basis could involve any increment of the 96-line total; however, standard line cards, which slide into splitters shelves, are in four-line increments (*id.*). While parties disagree about whether Verizon is required to make available its splitters to CLECs, there is agreement that it is technically feasible to make splitters available on a per line or per shelf basis (*see* Tr. at 239).

b. CLECs

ASCENT, AT&T, Covad, Rhythms, Sprint, and WorldCom all request that the Department direct Verizon to purchase splitters for their usage. ASCENT contends that CLEC access to Verizon-owned splitters is technically feasible, noting it is apparently done in other states (ASCENT Reply Comments at 9). Moreover, requiring CLECs to purchase their own splitters is inefficient, according to ASCENT, especially since CLECs would be required to purchase equipment beyond their needs (*id.*). ASCENT argues that such a Department directive would be consistent with the Act and with FCC Orders and that failure to require Verizon splitter ownership would improperly shift the burden of providing access to the high frequency portion of the loop to CLECs, giving a competitive advantage to Verizon (*id.* at 9-10).

AT&T argues that the Department should direct Verizon to make splitters available to CLECs on a per-line basis (AT&T Brief at 6). According to AT&T, this arrangement is both technically feasible and is more efficient (*id.*). AT&T contends that Verizon's rationale for not providing splitters (*i.e.*, it would have to develop appropriate business rules), is a "red herring" (*id.*). According to AT&T, the development of new business rules is something that Verizon must do for each and every UNE and UNE combination; the fact that new rules may be required is not a reason for Verizon to refuse to enable line splitting to be provided in the most efficient manner (*id.*).²⁰

²⁰ AT&T's arguments about line splitting over UNE-P are addressed in Section III.D, below.

Covad argues that Verizon has a legal obligation under federal law to provide splitters to requesting CLECs (Covad Brief at 12). Covad states that § 51.319(h)(4) gives ILECs the option to control splitters, but requires ILECs to “provide splitter functionality” to CLECs (id., citing 47 C.F.R. § 51.319(h)(4)). In addition, Covad argues that the Bell Atlantic/GTE merger conditions prevent Verizon from owning splitters for its own use, all of which must be transferred to its data affiliate; thus, Verizon’s argument about confusion and unnecessary operational complexities in distinguishing between Verizon-owned and CLEC-owned splitters is overstated (id.). Covad also disagrees with Verizon’s concerns about maintaining an inventory of splitters, arguing that the Department could require CLECs to agree upon one model or type of splitter that Verizon would be required to provide (id. at 12-13). In addressing Verizon’s stranded investment argument, Covad states that the Department could direct CLECs to commit to using the agreed-upon splitter for a certain period of time whenever CLECs purchase splitter capacity from Verizon (id. at 13).

Like other CLECs, Rhythms argues that Verizon ownership and management of the splitter is technically feasible (Rhythms Brief at 32). Rhythms argues further that if Verizon were to offer splitters on a per line and per shelf basis, splitter utilization and management would be improved (id. at 33). According to Rhythms, this option, which would allow CLECs to buy splitters in varying quantities, would give CLECs the necessary flexibility to minimize costs, provide service efficiently, and implement their individual business plans (id.). In response to Verizon’s statements that federal case law and FCC rules prevent the Department from directing it to purchase splitters for CLECs, Rhythms argues that the only relevant provision of law on this subject is the “Department’s statutory right to unbundle additional

network elements as it sees fit to establish and maintain competition” (*id.* at 21-22, *citing* 47 U.S.C. § 251(d)(3)).

WorldCom supports directing Verizon to purchase and make available to CLECs its splitters on a per shelf and per line basis (WorldCom Brief at 9). According to WorldCom, the FCC noted that arguments made “in favor of ILEC-owned splitters ‘merit prompt and thorough consideration by the [FCC],’ which the FCC will undertake in its review of petitions for reconsideration of the UNE Remand Order” (*id.* at 10, *citing* SBC Texas Order at ¶ 328). Moreover, WorldCom argues that the Line Sharing Order specifically contemplates additional state-imposed unbundling requirements and permits states to do so in a manner consistent with other FCC Orders (*id.* at 11, *citing* Line Sharing Order at ¶ 223).

Finally, Rhythms argues that the Department should direct Verizon to permit MDF-mounted splitters because such splitters are NEBS-compliant and do not impede Verizon’s ability to conserve space on its MDF (Rhythms Brief at 93, *citing* Exh. RLI/CVD-1).

3. Analysis and Findings

The Department will not direct Verizon to purchase splitters for use by CLECs. The FCC’s rules and Orders are clear: ILECs, such as Verizon, may provide splitters for CLEC use but are not required to do so. Covad argues that 47 C.F.R. § 51.319(h)(4)²¹ legally

²¹ Section 51.319(h)(4) reads: “In situations where a requesting carrier is obtaining access to the high frequency portion of the loop, the [ILEC] may maintain control over the loop and splitter equipment and functions, and shall provide to requesting carriers loop and splitter functionality that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop, as defined in this subsection, provided that such transmission technology is presumed to be deployable pursuant to section 51.230.” 47 C.F.R. § 51.319(h)(4).

obligates Verizon to purchase splitters. We disagree. First, Verizon is correct that Covad's interpretation of this rule is "contrary to the well-settled principle of statutory construction that one phrase of a provision cannot negate the direct intent of another phrase of the provision" (Verizon Reply Brief at 33 n.34). Second, the FCC's Order states clearly that "both the [ILECs] and the [CLECs] agree that subject to certain obligations, the [ILEC] may maintain control over the loop and splitter functionality if desired." Line Sharing Order at ¶ 76 (emphasis added). Covad's argument that the FCC's rules make ILEC splitter ownership discretionary but access to splitter functionality mandatory, cannot be supported by the plain language of the Line Sharing Order.

Based upon the record before it, it appears that the FCC assumed ILECs would want to maintain control over splitters. Various ILECs raised concerns about voiceband service degradation and an inability to properly "police" data services if CLECs owned and controlled splitters for line sharing arrangements. See Line Sharing Order at ¶ 76 n.169. Indeed, the majority of the FCC's splitter ownership discussion in the Line Sharing Order is about the obligations of ILECs should they seek to control the splitter (e.g., no delays in procuring necessary equipment, informing CLEC when equipment will be installed). Line Sharing Order at ¶ 77. In its Order approving Southwestern Bell's § 271 application for Texas, the FCC states, "The [FCC] has never exercised its legislative rulemaking authority under section 251(d)(2) to require [ILECs] to provide access to the splitter, and [ILECs] therefore have no current obligation to make the splitter available." The FCC further noted: "The UNE Remand Order cannot be fairly read to impose on [ILECs] an obligation to provide access to

their splitters;" and "we stated in the Line Sharing Order that [ILECs] have discretion to maintain control over the splitter." SBC Texas Order at ¶¶ 327-329.

There is no ambiguity about whether the FCC has made access to an ILEC splitter an unbundled network element. It clearly has not. Therefore, in order for the Department to direct Verizon to purchase splitters for use by CLECs -- that is, to require the unbundling of an additional network element -- the Department would have to perform the analysis set forth in 47 C.F.R. § 51.317. As mentioned in Verizon's brief, this analysis includes a review of such factors as: whether a requesting carrier's ability to provide the service it seeks to offer is "materially diminished" by not having access to this element; the costs a requesting carrier may incur absent this requested element; when the carrier may enter the market without access to the requested element; the quality and availability of the alternatives to this requested element; and the impact on network operations of using an alternative. 47 C.F.R. § 51.317(b). Section 51.317(c) sets forth additional factors the FCC, or a state commission, may use in making this determination, including, will the unbundling of this element promote the rapid growth of competition; and investment, innovation and facilities-based competition. 47 C.F.R. § 51.317(c).

The CLECs have not provided the Department with the information needed to perform this analysis. Conclusory statements about certain splitter capacity management efficiencies that Verizon may have or the buying power that Verizon may have do not create a sufficient factual record (see, e.g., Exh. RLI/CVD-1, at 57-58). Should the FCC, upon reconsideration of its UNE Remand Order, declare splitters either part of an existing or a new UNE, the Department can direct Verizon to amend its tariff accordingly. Until such time, however, the

Department finds it unnecessary to address CLEC requests for per line or per shelf access to Verizon's splitters. Witnesses for both Covad and Rhythms stated that it is technically feasible for CLECs to make available to other CLECs their splitters on a line-by-line or shelf-by-shelf basis (Tr. at 461-463).

Finally, the Department rejects the CLECs' request to direct Verizon to permit CLECs to mount their splitters directly on Verizon's MDF. Contrary to Rhythms' assertion that it has "thoroughly and completely refuted" Verizon's NEBS-compliant argument, it has provided no evidence that such splitters are NEBS-compliant (see Rhythms Brief at 93, citing Exh. RLI/CVD-1). According to Verizon, the only MDF-mounted splitter compatible with Verizon's frame is not NEBS-compliant because such splitters have failed NEBS safety requirements (Exh. VZ-MA-4, at 27; Exh. DTE-BA-MA 2-12). There is nothing in our record that rebuts Verizon's statements. Unrebutted, these statements have credibility and substance as evidence. When it is shown that MDF-mounted splitters that are compatible with Verizon's frame meet the appropriate safety standards, the Department would be willing to revisit its decision.

D. Line Splitting

1. Introduction

As stated most recently in its SBC Texas Order, the FCC notes that "the obligation of an [ILEC] to make the high frequency portion of the loop separately available is limited to those instances in which the [ILEC] is providing, and continues to provide, voice service on the particular loop to which the [CLEC] seeks access." SBC Texas Order at ¶ 324. Thus, the term "line sharing" is used to describe a situation where the ILEC and a CLEC use the same

loop to provide separate services. The term “line splitting” is used by the FCC to characterize the provisioning of both voice and data services over a single loop by a CLEC, through the UNE-Platform (“UNE-P”). Id. According to the Line Sharing Order, ILECs are “not required to provide line sharing to [CLECs] that are purchasing a combination of network elements known as the platform. In that circumstance, the [ILEC] no longer is the voice provider.” Line Sharing Order at ¶ 72. Verizon argues that it is not required to offer or permit “line splitting.” Several CLECs disagree.

There is not consistent usage among the parties about terminology and definitions; therefore, specification of how the Department uses certain terms is in order. As mentioned above, the FCC stated that “line sharing” is limited to an arrangement where an ILEC is providing and continues to provide voice service over a loop and shares the same loop with a single data CLEC. Line Sharing Order at ¶¶ 72-75; SBC Texas Order at ¶ 324. “Line splitting” is an arrangement where a CLEC, and not the ILEC, provides both the voice and data service over a single loop. SBC Texas Order at ¶ 324. Verizon uses the term “line sharing on UNE-P” to describe an arrangement where a voice CLEC and a data CLEC share a single loop. For this same arrangement, Rhythms uses the term, “line splitting on UNE-P.” In order to avoid confusion between line sharing and line splitting, we will refer to this scenario as “line sharing between two CLECs.”

2. Positions of the Parties

a. Verizon

Verizon asserts that the SBC Texas Order makes clear that ILECs do not have a legal obligation to provide line splitting or line sharing between two CLECs (Verizon Reply Brief

at 34). Contrary to arguments made by AT&T and WorldCom, Verizon contends that it has no obligation to preserve a CLEC's UNE-P arrangement should that CLEC decide it would like to offer data, as well as voice, over that loop (*id.* at 35). Rather, Verizon argues, the SBC Texas Order states that a CLEC can order "an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service" (*id.* at 36, *citing SBC Texas Order* at ¶ 325). This language, Verizon argues, indicates that the FCC did not envision that a UNE-P arrangement would remain in place after the provisioning of line splitting (*id.*). Therefore, Verizon urges the Department to reject AT&T's and WorldCom's argument that Verizon has to preserve the UNE-P arrangement in conjunction with line splitting (*id.*).

According to Verizon, its obligation to provide "line sharing" is limited just to those instances where it is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access (Verizon Brief at 34-36, *citing Line Sharing Order* at ¶ 72; SBC Texas Order at ¶¶ 320-329). However, Verizon notes that discussions to facilitate line splitting and line sharing between two CLECs are underway in the New York and Verizon will continue to work with the CLECs to resolve this matter (Verizon Brief at 38, *citing* Tr. at 206-210).

b. CLECs

AT&T argues that ILECs have an additional obligation to permit CLECs to engage in line sharing between two CLECs (AT&T Reply Brief at 3, *citing SBC Texas Order* at ¶ 325). According to AT&T, this obligation to facilitate line sharing between two CLECs flows

directly from Verizon's obligation under the Act to provide CLECs with non-discriminatory access to all "features, functions, and capabilities" of network elements, including the loop (id.). AT&T argues that when a CLEC leases a loop as part of a UNE-P arrangement, it is entitled to use all capabilities of that loop, including the high frequency spectrum (id.).

AT&T and WorldCom argue that when a customer who currently receives xDSL service from a data CLEC under a line sharing arrangement with Verizon wants to migrate his or her voice service to a CLEC using UNE-P, but continue to receive xDSL services from the same data CLEC, the voice service can be electronically migrated without any disruption or dismemberment of facilities. AT&T and WorldCom insist that Verizon's offer to permit the UNE-P provider to migrate its UNE-P configuration to an unbundled xDSL-capable loop and unbundled switch port at a collocation node provided by that CLEC or another CLEC does not preserve the UNE-P arrangement, and, thus, prevents voice CLECs from engaging in line-splitting (AT&T Reply Brief at 4-5, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2). According to AT&T, a Verizon requirement for unnecessary re-wiring and disconnection is discriminatory (AT&T Reply Brief at 4-5). Lastly, AT&T and WorldCom claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis (AT&T Reply Brief at 7; WorldCom Reply Brief at 2).

Rhythms argues that a customer obtaining voice service from a CLEC through UNE-P is entitled to obtain xDSL service from a data CLEC, and, thus, the Department should require Verizon to implement line sharing between two CLECs (Rhythms Reply Brief at 32-34).

Sprint and ASCENT also urge the Department to order Verizon to provide xDSL service where a CLEC is providing voice service through UNE-P or on resold lines (Sprint Brief at 5-6; ASCENT Reply Brief at 4).

3. Analysis and Findings

In the SBC Texas Order at ¶ 325, the FCC states that ILECs have an obligation to permit competing carriers to engage in line splitting where the competing carrier purchases the entire loop and provides its own splitter. The FCC states that in order for a competing UNE-P carrier to provision both data and voice service over the same loop, it can order the loop portion of the existing UNE-P as an unbundled, xDSL-capable loop terminated to a collocated splitter and DSLAM equipment along with unbundled switching combined with shared transport to “replace its UNE-P.” SBC Texas Order at ¶ 325. Verizon states, and we agree, that it permits CLECs to engage in line splitting exactly as described in the SBC Texas Order (Exh. DTE-BA-MA 1-19). Therefore, we find that Verizon has met its obligation to provide “line splitting.” AT&T and WorldCom argue that the voice service can be electronically migrated without any disruption or dismemberment of facilities, and, therefore, UNE-P must remain intact in line splitting. However, the argument AT&T and WorldCom use to support their claim that UNE-P migration is possible without disruption is based on line sharing between two CLECs, and not line splitting as defined by the FCC.²² In addition, AT&T and WorldCom do not rebut Verizon’s argument that a UNE-P arrangement no longer exists under a line splitting arrangement. We agree with Verizon that the SBC Texas Order at ¶ 325 states

²² See AT&T Reply Brief at 4, citing Tr. at 224-225, 237; WorldCom Reply Brief at 2.

that a line splitting configuration replaces a UNE-P arrangement, and not that a UNE-P arrangement remains in place after the provisioning of line splitting. Therefore, the Department rejects the CLECs' request to permit a CLEC's UNE-P arrangement to remain intact after line splitting.

AT&T and WorldCom also claim that Verizon must offer line splitting functionality to CLECs on a line-at-a-time basis. This argument is premised on the assumption that Verizon is required to provide CLECs with access to Verizon's splitter, which, as we decided above in section III.C, is incorrect. The FCC states that its UNE Remand Order cannot "fairly be read to impose on [ILECs] an obligation to provide access to their splitters." SBC Texas Order at ¶ 328. Similarly, the FCC states that it has not imposed any obligation on ILECs to provide access to their splitters in a line splitting arrangement. Therefore, we deny AT&T's and WorldCom's requests. See SBC Texas Order at ¶ 329.

With respect to Rhythms' argument that Verizon must provide line sharing between two CLECs, the FCC states that when the customer, for whatever reason, voluntarily terminates its ILEC-provided voice service on the shared loop, or if the ILEC disconnects the customer's voice service in compliance with applicable federal, state and local law (e.g., the customer does not pay its local voice telephone bill), the data CLEC must purchase the entire unbundled loop. Line Sharing Order at ¶¶ 72-73. Although the FCC states that, in such cases, the data CLEC may enter into a voluntary line sharing agreement with a voice CLEC, the FCC does not make this arrangement the ILEC's obligation. We agree with Verizon that it is not obligated to provide line sharing between two CLECs. Line Sharing Order at ¶73. The FCC has emphasized numerous times that an ILEC is required to provide line sharing only when it

is the voice service provider. In addition, Verizon indicated that it is working with CLECs to resolve technical and operational issues on this matter in the New York collaborative. We expect Verizon to import whatever technical and operational resolutions are reached in New York to Massachusetts (see Exh. VZ-MA-3, at 4, 14, in which Verizon commits to implement in Massachusetts any resolutions reached in the New York collaborative). Therefore, we reject Rhythms' request.

E. Intervals

1. Provisioning and Loop Conditioning Intervals

a. Introduction

Part A, Section 3.2.10.A of Verizon's proposed tariff states that Verizon will provision one to nine line-shared loops within six business days, and for orders of ten or more line-shared loops, the provisioning interval is negotiated. Verizon states that this interval applies to both its unbundled xDSL stand-alone loop offering and its retail ADSL service (Verizon Brief at 6). For loop conditioning, Part A, Section 3.2.3.7 of Verizon's tariff proposes a 15 business-day interval. In contrast, several CLECs support a staggered provisioning interval, beginning with three business days upon issuance of the Order in this proceeding and decreasing to one business day after a certain period of time (Rhythms Brief at 16; Covad Brief at 2; DBC Brief at 22). In addition, Covad proposes a loop conditioning interval of five business days (Covad Brief at 2).

b. Positions of the Partiesi. Verizon

Verizon argues that the FCC makes clear in its Line Sharing Order that the most appropriate line sharing interval to apply “at the outset” of line sharing is the provisioning interval applicable to Verizon’s stand-alone xDSL loop offering, and that the FCC encourages states to require ILECs to fulfill requests for line sharing within the same interval that the ILEC provisions xDSL to its own retail or wholesale customers (Verizon Brief at 7-8, citing Line Sharing Order at ¶¶ 171-174). Verizon contends that the CLECs’ highly accelerated proposed interval is flawed for several reasons (Verizon Brief at 8). First, several CLECs claim that the work involved in provisioning a line-shared loop requires a mere ten minutes of wiring work in the central office (id. at 9). Verizon argues that this assertion ignores the fact that provisioning work is far more involved than a few simple cross-connects made in the central office (id.). Specifically, Verizon states it must perform significant “front end ordering” work, which goes through a number of OSS and service centers (id.). Among other things, these service centers: identify and verify the assigned cable and pair to be shared and the tie cables to be used; update inventories for maintenance and network management; update retail records to reflect the shared use of the line; and update billing systems (id.).

According to Verizon, the CLECs also fail to account for the “force to load”²³ allocation that must be performed (id.). Verizon argues that its Work Force Administrator (“WFA”) must assign a technician to perform the wiring work in the central office for every

²³ “Force to load” is Verizon’s workload measured against Verizon’s available workforce (see Exh. VZ-MA-1, at 11).

line sharing order, a fact that becomes more complicated if this work is to be performed in an unmanned central office (id. at 9-10). Verizon states that one consideration in its “force to load” balancing is an attempt to make the dispatches to unmanned offices more efficient by having the technicians perform as many jobs as possible (id. at 10). Verizon mentions that pair swaps²⁴ may also build additional time into the provisioning process (id.). While CLECs may argue that no outside dispatch is necessary to provision line sharing orders, Verizon contends that “until further experience is gained,” it does not know the percentage of line sharing orders that will require an outside dispatch (id. at 9). In fact, Verizon notes that dispatches were required for approximately one-quarter of its retail Infospeed orders (Verizon Reply Brief at 27, citations omitted).

According to Verizon, CLEC errors, such as incorrect information on service orders, or CLEC practices, such as frequently changing the facilities assignment, create delays in processing orders and divert the attention of Verizon’s employees from processing “clean” CLEC orders (Verizon Brief at 10). Verizon notes that other examples of situations creating delays include: the telephone number cannot be found in Verizon’s systems; the cable and pair cannot be found; the slot on the splitter requested by the CLEC is already taken; and the loop turns out to be unqualified, even though the local service request indicates that it is qualified (id.). Moreover, Verizon argues that CLECs also ignore the necessary “back end” testing that

²⁴ A pair swap, or line and station transfer, involves moving a customer’s voice service to an adjacent or alternative loop and is performed when conditioning the existing loop to support xDSL service would significantly degrade the voiceband service. See Line Sharing Order at ¶ 86.

must be completed to ensure that the work was provisioned properly and to avoid mis-wiring the circuit (id. at 9, 11).

Verizon contends that the fact that certain work activities may be completed within a discrete period of time is not indicative of the full length of time it takes to provision an average line sharing order (Verizon Reply Brief at 28). Verizon argues that while the FCC permits state commissions to adopt “more accurate provisioning standards” for line sharing, the “3-2-1” interval (see discussion below) proposed by the CLECs is not “more accurate.” Until further experience is gained in provisioning these orders, Verizon asserts that the evidence in this proceeding supports its proposed six business-day interval (id. at 26).

As it gains experience and after the OSS upgrades are implemented, Verizon indicates it hopes to decrease the provisioning interval (Verizon Brief at 13). However, Verizon argues, attempting to meet an “unrealistically short interval” during the next few months, as proposed by several CLECs, would only jeopardize Verizon’s efforts to provide a “quality turn-up” of the provisioning of shared loops (id.). Verizon urges the Department to approve Verizon’s proposed interval, which will ensure parity of performance with the provisioning of stand-alone loops, and which will be applied on a non-discriminatory basis both to the CLECs and Verizon’s data affiliate (id.).

Verizon asserts that 15 business days to condition loops is the appropriate interval that should be adopted by the Department. Verizon claims that, in many cases, this conditioning work is equivalent to a full construction job, and plant must be reconstructed at numerous locations and over several miles (Exh. VZ-MA-4, at 19).

ii. Attorney General and CLECs

The Attorney General notes that a Verizon witness acknowledged during the evidentiary hearing that a five business-day provisioning interval can be achieved by January 1, 2001, when Verizon's data affiliate is expected to begin operating in Massachusetts (Attorney General Brief at 9, citing Tr. at 156). Furthermore, the Attorney General contends that Verizon agreed to consider further reductions to this interval as it gains line sharing experience (id., citing Exh. VZ-MA-4, at 14). The Attorney General urges the Department to reduce the provisioning interval accordingly (id. at 9-10).

Covad, Rhythms, Vits, DBC, WorldCom, and Sprint argue that the tasks involved in provisioning line sharing are much simpler than provisioning stand-alone xDSL loops and, therefore, a staggered 3-2-1 calendar-day interval is more reasonable. In other words, the initial provisioning interval should be three (3) calendar days; after a certain period of time, the interval should be reduced to two (2) calendar days; and after an additional amount of time, the interval should be reduced to one (1) calendar day. Covad argues that unlike stand-alone xDSL loops, the physical work needed to provision line sharing takes place entirely in the central office and can be completed in a matter of minutes (Covad Brief at 3). Covad states that even if Verizon alleges that a dispatch is required for unmanned central offices, only a minority of Verizon's lines (16 percent) are served by such central offices (Covad Reply Brief at 6-7, citing Exh. RLI/CVD-108). Covad urges the Department not to adopt Verizon's longer proposed interval simply to accommodate a few orders that may require a dispatch but, instead, to establish separate intervals for dispatched and non-dispatched orders (Covad Reply

Brief at 6-7). In fact, Covad contends that Verizon's data show that the percentage of its Infospeed orders requiring a dispatch has been decreasing sharply²⁵ (Covad Reply Brief at 6).

Covad proposes a five business-day interval for line sharing arrangements that require loop conditioning (Covad Brief at 7). Covad claims that while Verizon has to dispatch a technician into the field to perform conditioning, there is nothing on the record that explains why performing such a dispatch would take any longer than the six business-day interval that Verizon offers for provisioning stand-alone loops, which requires a dispatch 100 percent of the time (id.).

Rhythms maintains that Verizon's proposed six-day interval was established to manage the exception rather than the rule (Rhythms Reply Brief at 9). Rhythms asserts that there is no need to dispatch a technician to do outside plant work in line sharing because the line is already working with dial-tone (Rhythms Brief at 16). According to Rhythms, the time required for a dispatch is the principal driver of the six-day interval. And despite Verizon's statements to the contrary, Rhythms argues that Verizon is unable to justify its claim that dispatches are routine (id.). For example, according to Rhythms, Verizon states that dispatches are required to remove maintenance test units ("MTUs")²⁶ from the customer's premises. However, Rhythms argues, Verizon has been unable to quantify the magnitude of this problem (id. at 17, citing

²⁵ In April, 78 percent of Verizon's orders were completed without a dispatch. By July, that figure had increased to 87 percent (Covad Reply Brief at 6, citing Exh. DTE-BA-MA 2-9-Supp.)

²⁶ According to Verizon's witness, MTUs are devices that are placed on the side of an end-user's premises and are used when Verizon has trouble with access to the end-user (Tr. at 141). This device reverses the polarity of the circuit and enables the electronics in the MTU to disconnect the inside wire from the outside wire (id.).

RR-CVD-4). Furthermore, Rhythms argues that MTU removal is not germane to the provisioning process but, rather, is a repair issue (Rhythms Reply Brief at 10, citing Tr. at 56). Rhythms also contends that the number of lines served out of unmanned central offices is too small to justify a provisioning interval of six business-days (id. at 18, citing Exh. RLI/CVD-10). Lastly, according to Rhythms, Verizon is unable to support its claim that line and station transfers (“LSTs”), which require dispatches, would have to be performed with some frequency and would affect Verizon’s ability to provision line sharing in a shorter interval (Rhythms Reply Brief at 10).

Contrary to Verizon’s statements, Rhythms contends its own suggested staggered interval does recognize both front-end and back-end work that Verizon must perform to provision a line sharing order (id. at 8). However, Rhythms argues that Verizon inflates its estimates of front-end and back-end activities, and other portions of the interval, by purporting to account for a series of mistakes, interventions, and catastrophes, which are either under Verizon’s control or unlikely to occur, and assigns exaggerated time periods to simple and repetitive tasks (Rhythms Reply Brief at 7-8). Rhythms states that Verizon’s provisioning interval only starts once all the front-end ordering problems -- to which Verizon cites as a reason to justify a longer interval -- are resolved (id. at 8). Moreover, according to Rhythms, once Verizon has a complete order, Verizon will stop the clock when problems arise during the provisioning process until the problem is resolved (id. at 9). Rhythms also argues that Verizon further inflates this interval by allotting an excessive two full days for testing (id.).

Rhythms contends that Verizon’s claim of inexperience in line sharing is belied by the fact that Verizon has been provisioning Infospeed, its retail line sharing service, for more than

a year and has provisioned many thousands of shared lines (Rhythms Brief at 22, citations omitted). Rhythms asserts that the FCC contemplated that state commissions would mandate more accurate line sharing provisioning intervals as more information became available and stated that states are free and are encouraged to adopt more accurate provisioning standards for the high frequency portion of the loop (Rhythms Reply Brief at 14, citing Line Sharing Order at ¶ 175).

Rhythms contends that its Internet service provider partners are demanding shorter provisioning intervals, claiming that customers can receive cable modem service, which is a competitive alternative to xDSL, in a five-day interval. Rhythms claims that in order to remain competitive with cable modem services, Rhythms and other xDSL providers must provide their services in shorter intervals (Rhythms Brief at 22, citing Tr. at 41).

DBC supports the 3-2-1 interval proposed by Covad and Rhythms for orders of fewer than ten loops and asks the Department to establish “reasonable” intervals for larger orders (DBC Brief at 21). According to DBC, Verizon can easily meet these shorter intervals by subtracting the time Verizon has allocated to activities that do not pertain to line sharing provisioning (id. at 23). Indeed, DBC’s witness testified that Verizon can “get an order and get it wired, tested, and back to the customer within one day” (id. at 24, citing Tr. at 319-320). DBC argues Verizon’s testimony is “replete with possibilities and contingencies, which [Verizon] admitted that it has not tracked” (id., citing Tr. at 300). Moreover, DBC argues that Verizon’s proposed “extra negotiation phase” for every order over nine lines is anti-competitive and should either be eliminated or increased to a substantially higher limit to safeguard against the potential for delay and discrimination (id. at 24-25).

WorldCom argues that the six-day interval for stand-alone loops, upon which the line-sharing interval is based, has two days built in for a cooperative testing process and time for dispatches out to the customer's premises (WorldCom Brief at 11). According to WorldCom, with line sharing, there is no need for cooperative testing or dispatches -- indeed, there is no need for any work to be done outside the central office because a functioning loop with dial tone is already in place (id. at 11-12). While WorldCom has not proposed a specific provisioning interval for line sharing, it notes that Verizon's product interval guide provides a two-day interval for UNE-P voice migrations that do not involve dispatches (id. at 12). In addition, a WorldCom subsidiary's interconnection agreement with Verizon provides for a 24-hour interval for residential plain-old-telephone-service ("POTS") orders without a dispatch, and a 48-hour interval for business POTS orders without a dispatch (id. at 12-13, citations omitted). Therefore, according to WorldCom, the provisioning interval for POTS voice migrations is a "far more appropriate benchmark" to use for line sharing than the interval for stand-alone xDSL loops, which actually require dispatches (id. at 13).

The MA CLEC Alliance argues that Verizon has not justified imposing longer intervals when a CLEC requests access to more than nine loops (MA CLEC Alliance Brief at 18). In addition, the MA CLEC Alliance contends that Verizon should be required to apply the SMARTS clock,²⁷ as it does in provisioning other UNEs (id.). Vitts agrees with other CLECs that in requesting the six business-day interval for provisioning, Verizon has assumed the

²⁷ The SMARTS clock is Verizon's system that queues outside installation dispatch requests on a first-come, first-served basis and indicates to the requester (either a CLEC or a Verizon employee) the first date that a Verizon technician could be dispatched (see Exh. VZ-MA-1, at 11).

worst-case scenario for provisioning line-shared loops, and that many of the cited problems are within Verizon's control (Vitts Brief at 3). Such problems, according to Vitts, include errors by the Telecom Industry Services Ordering Center ("TISOC") representative, inaccuracies in inventory control and maintenance, and faulty stenciling of the collocation node -- none of which should "accrue to the detriment of CLECs" (*id.*). Vitts also argues that mistakes on the part of CLECs have no bearing on the running of this six-day interval because in the event of an error, the clock returns to day zero (*id.*, *citing* Tr. at 67). Finally, Vitts argues that Verizon's claim that "force to load" considerations justify this six-day interval begs the question (Vitts Reply Brief at 2). According to Vitts, "force to load" is merely a multiplier or "time mark-up" that would be equal for line sharing and stand-alone xDSL loop provisioning (*id.* at 2). Therefore, if a line-shared loop involves fewer steps and less total time, which Vitts argues it does, the "force to load" multiplier yields a proportionately shorter interval (*id.*). Finally, Sprint and ASCENT both support shorter provisioning intervals, arguing that Verizon has not developed its proposed interval based on the work required for a line sharing arrangement (Sprint Brief at 3; ASCENT Reply Brief at 10).

c. Analysis and Findings

Verizon provided us with a detailed description of the work activities it must perform and the problems that might occur in the course of provisioning process (Tr. at 106-150). We expect some of these problems will become less frequent and, eventually, be eliminated as both CLECs and Verizon gain experience in line sharing and as Verizon's OSS is upgraded. Indeed, Verizon indicated that, through its experience with stand-alone ADSL loops in New York and in the New York collaborative, it built "more checks into the system, more steps

where testing and coordination could be done, and we cleared up those problems significantly” (Tr. at 88). Although Verizon already has some experience in line sharing through provisioning its retail DSL service, the Department finds that the most reasonable option for intervals is to start with the FCC’s suggested interval, i.e., an interval that is at parity with Verizon’s own retail xDSL service. This is the most reasonable option because it is based on actual experience and it maintains parity between Verizon and its competitors.

Verizon’s average provisioning interval for Infospeed, the most accurate analogue to the line sharing provisioning interval, has been decreasing consistently in approximately one-day increments each month, from 8.76 days (no dispatch) and 12.14 (dispatch) in April 2000 to 4.70 days (no dispatch) and 5.93(dispatch) in July 2000, while volumes have increased (Exh. DTE-BA-MA 2-9, Supp.; Exh. VZ-MA-4 at 16). Thus, the six business-day interval Verizon has proposed is no longer at parity with the provisioning interval for Infospeed, which it must be to consider Verizon’s offering as non-discriminatory. Therefore, we direct Verizon to provision line-shared loops at the shorter of a) five business days; or b) the shortest average interval (using a weighted average for no dispatch/dispatch) that Verizon has achieved by the effective date of this Order.

Verizon has demonstrated significant improvement in its ability to offer Infospeed in shorter intervals, while the number of orders has increased steadily from 2,423 provisioned orders in April 2000 to 3,742 orders in July 2000 (Exh. DTE-BA-MA 2-9, Supp.). Verizon should be able to achieve a further shortening of this interval as it gains more experience and after its OSS are upgraded (see Tr. at 84). Therefore, the Department further directs Verizon to file 30 days after implementation of the OSS upgrades in Massachusetts a revised tariff

setting forth an interval that is one business day shorter than the interval arrived at pursuant to the above directives. In addition, we expect that Verizon will work cooperatively with CLECs to continue to reduce this interval and that if Verizon-New York agrees, as part of the New York collaborative, to provision line sharing in a period of time that is shorter than the provisioning interval set in Massachusetts, the Department directs Verizon to file a revision to its tariff to reflect this shorter period of time (see Exh. VZ-MA-3, at 4, 14 (stating that Verizon will apply the results of the New York collaborative in Massachusetts)). This filing should be made with the Department no later than ten days after such an agreement and should be effective on the same date it is effective in New York.

The Department does not direct Verizon to create two separate intervals for dispatched and non-dispatched orders. Verizon states that it does not know whether a dispatch will be required when an order is placed (Exh. DTE-BA-MA 2-10). While there is a superficial appeal to keeping the intervals for these orders separate, based upon the record before us and absent additional information, it appears that assigning different intervals for dispatched and non-dispatched orders simply is not workable at this time. We also decline to adopt DBC's request to modify the number of loops that are subject to our standard provisioning interval (see DBC Brief at 21). According to Verizon, while it requires a negotiated interval for orders containing more than nine lines per order, a CLEC may file 100 orders for eight lines each on a single day and Verizon would still be required to provision the request within our standard provisioning interval (see Tr. at 163). The Department does not believe Verizon's negotiated interval for orders containing more than nine lines per order poses any hindrance to the deployment of line sharing.

Regarding the conditioning interval, Covad argues that since performing a dispatch takes six days for stand-alone loops, there is no reason why the dispatch to condition loops should take any longer. We find that Covad's argument is flawed. Although both provisioning stand-alone loops and conditioning loops require dispatches, the work activities the dispatched technician performs are different. If we follow Covad's reasoning, the provisioning intervals for stand-alone loops would be the same with or without conditioning. They are not. Should a stand-alone loop require conditioning so that it can support xDSL service, Verizon has proposed a 15 business-day interval. It is the same interval that Verizon has proposed for loop conditioning on a shared loop. We find nothing in the record to support Covad's argument that the provisioning interval for stand-alone loops is analogous to the time it takes to condition a loop. Therefore, we deny Covad's request.

2. Splitter and Cable Capacity Augmentation Interval

a. Introduction

Verizon's proposed tariff applies a 76 business-day interval, currently applicable to physical and virtual collocation arrangements, to splitter installations and cable augmentations. Part E, Section 2.5.1.B. CLECs oppose this interval and urge the Department to adopt a shorter period of time.

b. Positions of the Parties

i. Verizon

Verizon argues that its 76 business-day proposal for line sharing augmentations and splitter installations is appropriate because the work required is "substantially the same" as for other collocation arrangements (Verizon Brief at 14). Indeed, Verizon urges the Department